STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0833

In the Matter of the Civil Commitment of: David Austin Russell.

Filed December 17, 2018
Affirmed
Florey, Judge

Winona County District Court
File No. 85-PR-18-815

Joyce A. Svoboda, Svoboda Law Office, Lake City, Minnesota (for appellant David Russell)

Karin L. Sonneman, Winona County Attorney, Susan E. Cooper, Assistant County Attorney, Winona, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

Appellant David Austin Russell challenges the district court's order continuing his commitment as mentally ill and the authorization of neuroleptic medications,[1] arguing there was insufficient evidence in the record to support the court's decision. We affirm.

[1] "Neuroleptics" are a class of medications that effectuate a "sedation of the nervous system." *Jarvis v. Levine*, 418 N.W.2d 139, 140 n.1 (Minn. 1988).

FACTS

Appellant, a 38-year-old male, has a history of prior commitments dating back to June 2014. His first psychiatric episode, however, was at age 18. According to his medical records, appellant attempted to poison his father and stepmother with bleach, and he was hospitalized after attempting suicide.

Appellant struggles with reoccurring delusions and hallucinations, many of which involve allegations of being sexually assaulted and tortured during his hospitalizations. In a psychiatric assessment from March 2018, his doctor observed that "[appellant] has so much emotional stake on [these false convictions] that unfortunately, he gets agitated when he tries to demand to obtain records from both his hospitalizations as well as the court system." His doctor stated that appellant's behavior "invariably has resulted in additional charges against him and more negative experiences where he is bound to feel abused." Appellant has been diagnosed with paranoid schizophrenia, anxiety, depression, post-traumatic stress disorder (PTSD), and a reported history of traumatic brain injury.

Beginning in early January 2018, appellant was hospitalized at the Community Behavioral Health Hospital (CBHH) in Rochester. On March 1, 2018, he was provisionally discharged. Upon his release, he reported being unable to sleep, and believed that people were drugging him through the vents in his apartment. The next day, appellant went to a gas station and asked a stranger for a gun so he could kill himself. Appellant's sister called law enforcement after receiving a text from him saying that he wanted to die.

Within less than 24 hours of being provisionally discharged, appellant was returned to another hospital by police. He was placed on a 72-hour hold and transferred to Mayo

Clinic Hospital's psychiatric unit. While at Mayo, appellant displayed threatening, aggressive, and paranoid behavior toward staff and patients, and voiced his desire to commit suicide. He required involuntary administrations of medication in order to reduce his psychotic episodes.

On March 22, 2018, appellant was transferred from the psychiatric unit and re-admitted to Rochester's CBHH. He was provisionally discharged on April 17, 2018, with his civil commitment and *Jarvis* order[2] set to expire on May 17, 2018. On April 25, 2018, Winona County filed a petition seeking to continue the commitment of appellant as a mentally ill person. A report prepared by appellant's doctor at CBHH, Dr. Angela Leon Galat, as well as a pre-petition screening report prepared by appellant's caseworker, Kristin Holien, were filed in conjunction with the county's petition.

In early May 2018, a review hearing on the petition to continue the commitment of appellant was held. The state recommended a continued provisional discharge, whereby appellant would remain in the community in his own apartment. The state called Ms. Holien to testify and submitted appellant's medical records and a report written by the court-appointed medical examiner, Dr. Meaghan Johansen.

Although appellant refused to cooperate with Dr. Johansen for his updated psychiatric evaluation in preparation for the hearing, she was able to provide the court with a formal recommendation. Basing her expert opinion on her past examination of appellant

[2] In *Jarvis*, the Minnesota Supreme Court held that the involuntary administration of neuroleptic medication must be preauthorized by a court order. 418 N.W.2d at 148-50. Minn. Stat. § 253B.092, subd. 8 (2018), now provides the procedure and authority for the involuntary administration of neuroleptic medication.

about a year prior, as well as the report filed by Dr. Galat, Dr. Johansen recommended that appellant be committed.

Ms. Holien, who had been appellant's case manager since October 2016, testified that she believed continued commitment was "essential." She testified to appellant's proclivity to discontinue his medications when he is not subject to a *Jarvis* order, and described him as becoming increasingly anxious, agitated, aggressive, threatening, noncompliant, and delusional when he stops taking them. Ms. Holien stated that she believed neuroleptic medication was necessary and that a provisional discharge in the community was the least restrictive option meeting appellant's ongoing mental-health needs.

Appellant preferred to wait outside the courtroom for most of the hearing but agreed to come in at the end to testify. During his testimony, appellant stated his intention to "wean off" his neuroleptic medication once he "stabilized a little bit." He also displayed symptoms of his reoccurring delusions and hallucinations, alleging, for example, that he had been a victim of sexual assault and torture in the hospitals to which he had been civilly committed in the past.

At the close of the hearing, the district court stated its intention to continue commitment, finding support in the recommendations of Dr. Johansen, Dr. Galat, Ms. Holien, and the testimony of appellant himself. Two days later, the district court filed its order committing appellant to the custody of the commissioner of human services for an additional period not to exceed 12 months, and extending appellant's *Jarvis* order during the term of commitment. This appeal follows.

D E C I S I O N

I. There was sufficient evidence in the record to support the statutory requirements of Minn. Stat. § 253B.12 (2018) for continued commitment.

Appellant challenges the district court's determination that he is a "person who is mentally ill" within the meaning of Minn. Stat. § 253B.02, subd. 13 (2018). When reviewing a civil commitment, we are "limited to an examination of the [district] court's compliance with the statute, and the commitment must be justified by findings based upon evidence at the hearing." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). An appellate court reviews the record in the light most favorable to the district court's decision and will not reverse a district court's findings "unless clearly erroneous." *Id.*; *see also In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995). We review de novo the district court's legal conclusions. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

"There must be clear and convincing evidence that a person is mentally ill in order to commit that person." *In re Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). Under Minn. Stat. § 253B.02, subd. 13(a), a "person who is mentally ill" is defined as:

> [A]ny person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:
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> . . . .
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> (3) a recent attempt or threat to physically harm self or others . . . .

"[T]he district court may continue an involuntary commitment under a less stringent standard than an initial commitment." *Thulin*, 660 N.W.2d at 144. Under Minn. Stat. § 253B.12, subd. 4, the district court must find by clear and convincing evidence that:

> (1) the person continues to be mentally ill . . . (2) involuntary commitment is necessary for the protection of the patient or others; and (3) there is no alternative to involuntary commitment.
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> In determining whether a person continues to be mentally ill . . . the court need not find that there has been a recent attempt or threat to physically harm self or others . . . . Instead, the court must find that the patient is likely to attempt to physically harm self or others . . . unless involuntary commitment is continued.

When continuing an involuntary commitment, a district court's "findings of fact and conclusions of law shall specifically state the conduct of the proposed patient which is the basis for the final determination, that the statutory criteria of commitment continue to be met, and that less restrictive alternatives have been considered and rejected by the court." Minn. Stat. § 253B.12, subd. 7. The district court's reasons for "rejecting each [less restrictive treatment] alternative shall be stated." *Id.*

Appellant argues that he is not mentally ill within the statutory meaning. He contends that "all of the [d]octors that he has seen and been evaluated by in Winona County since 2014" as well as "all of Winona County" have a conflict of interest against him. Further, he alleges that he has been the victim of sexual assault and torture during his prior civil commitments.

We conclude there was sufficient evidence in the record to support the district court's finding that the statutory requirements of Minn. Stat. § 253B.12, subd. 4, were met.

After considering the recommendations of Dr. Johansen, Dr. Galat, and Ms. Holien, as well as the testimony of appellant himself, the district court found that appellant continued to be mentally ill and that "[i]nvoluntary commitment [was] necessary for the protection of [appellant] as he [was] likely to attempt to physically harm himself, or fail to meet his basic needs if his commitment [was] not continued." The district court found that the structure and supervision of commitment was necessary "to stabilize [appellant's] mental health so he [could] remain safely in the community" and that there was "no less restrictive alternative to commitment."

In accordance with Minn. Stat. § 253B.12, subd. 7, the district court's findings of fact and conclusions of law specifically stated appellant's conduct that was the basis for the court's final determination:

> [Appellant] continues to have a substantial psychiatric disorder of mood, specifically, Schizophrenia, Paranoid Type, which grossly impairs [appellant's] judgment, behavior, capacity to recognize reality, and to reason and understand. [Appellant] continues to experience symptoms of his mental illness, including delusional thoughts. [Appellant] has expressed suicidal thoughts as recently as early March 2018.

Given the recommendations to the district court of Dr. Johansen, Dr. Galat, and Ms. Holien, as well as appellant's medical records and testimony displaying symptoms of his mental illness, we conclude there was sufficient evidence to support the statutory requirements of Minn. Stat. § 253B.12, and, therefore, the district court properly continued appellant's commitment. *See Thulin*, 660 N.W.2d at 144 (affirming continued commitment where the evidence in the record was sufficient to support the statutory requirements of Minn. Stat. § 253B.12, subd. 4).

II. There was clear and convincing evidence in the record to support the district court's order authorizing the continued involuntary administration of neuroleptic medications.

Appellant also challenges the district court's order authorizing the continued involuntary administration of neuroleptic medications. "Court approval is required to administer neuroleptic medication to a person who refuses it." *Thulin*, 660 N.W.2d at 145 (citing Minn. Stat. § 253B.092, subd. 8(a); *Jarvis*, 418 N.W.2d at 144). Under Minnesota law, a "patient is presumed to have capacity to make decisions regarding administration of neuroleptic medication." Minn. Stat. § 253B.092, subd. 5(a) (2018). To determine whether a patient has the capacity to make such a decision, the court considers:

> (1) whether the person demonstrates an awareness of the nature of the person's situation, including the reasons for hospitalization, and the possible consequences of refusing treatment with neuroleptic medications;
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> (2) whether the person demonstrates an understanding of treatment with neuroleptic medications and the risks, benefits, and alternatives; and
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> (3) whether the person communicates verbally or nonverbally a clear choice regarding treatment with neuroleptic medications that is a reasoned one not based on delusion, even though it may not be in the person's best interests.

Minn. Stat. § 253B.092, subd. 5(b) (2018). The court's determination must be supported by "clear and convincing evidence." *Thulin*, 660 N.W.2d at 145.

We conclude there was clear and convincing evidence in the record to support the district court's order. Ms. Holien testified to appellant's behavior when he discontinues his medication and stated that it was her professional opinion that neuroleptic medication was necessary. The district court also considered the expert opinion of Dr. Johansen, who

stated that appellant "decompensates" when he is not receiving appropriate medication, and "[a]t those times, he lacks insight to seek treatment." Dr. Johansen recommended "[o]ngoing compliance with prescribed neuroleptic medication," as appellant had been observed "to have improvement on appropriate medications in the past." Lastly, the district court heard from appellant himself, who stated that he planned to "wean off" the neuroleptic medication once he "stabilized a little bit."

The district court indicated that one of the reasons supporting its decision to continue commitment was appellant's "lack of compliance with medication." It stated that "[appellant] himself says he'll only use the medication until he wants to wean off on his own," and "then we go into this cycle of downward spiral." The district court found appellant to have "limited insight into his mental illness" and "a history of stopping neuroleptic medications when he is not under a commitment status, with a deterioration in his mental health." Accordingly, the district court authorized the *Jarvis* order to remain in full force and effect during appellant's continued commitment.

Based on the testimony that was presented at the review hearing as well as the medical records and reports that were submitted to the district court, we conclude there was clear and convincing evidence to support the district court's order authorizing the continued involuntary administration of neuroleptic medications.

Affirmed.